



**Jackson (Suing on behalf of Somet Ole Tanyaag) v Sigei (Environment & Land Case E021 of 2021) [2023] KEELC 20110 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20110 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E021 OF 2021  
CG MBOGO, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**TANYAAG SHINANAI JACKSON (SUING ON BEHALF OF SOMET OLE TANYAAG) ..... PLAINTIFF**

**AND**

**JULIUS SIGEI ..... DEFENDANT**

**RULING**

1. Before this court for determination is the Notice of Motion Application dated May 23, 2023 filed by the defendant/applicant and which is expressed to be brought under Article 159 (1)(d) of the Constitution, Sections 1,1A, 3A and 6 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders: -
  - a. Spent.
  - b. That this honourable court be pleased to stay any further proceedings in this suit pending the hearing and determination of this application.
  - c. That this honourable court be pleased to stay any further proceedings in this suit pending the hearing and determination of Narok Chief Magistrates Court Criminal Case No E339 of 2023, R versus Jackson Tanyaag.
  - d. That costs of this application be in the cause.
2. The application is premised on the grounds inter alia that there is a pending criminal case against the plaintiff/respondent in Narok Criminal Case No E339 of 2023 where he is charged with uttering false documents contrary to Section 353 of the Penal Code by presenting forged minutes dated June 23, 2021 which is scheduled for hearing on June 29, 2023.



3. The application is supported by the affidavit of the defendant/applicant which was sworn on even date. The defendant/applicant deposed that prior to the institution of this suit, the plaintiff/respondent had forwarded their grievances to the Assistant County Commissioner who invited him for a meeting at his offices on June 23, 2021. And as such, in support of his claim in this suit, the plaintiff/respondent will be relying on what he purports to be minutes of the said meeting whose resolutions required him to vacate the suit property.
4. Further, that he is aware that there is a criminal case that has been instituted against the plaintiff/respondent in Criminal Case No E339 of 2023 and if the proceedings herein are not stayed, chances are that this court will reach a decision based on falsified documents resulting to embarrassment.
5. The application was opposed vide the replying affidavit of the plaintiff/respondent sworn on June 8, 2023. The plaintiff/respondent deposed that the Office of the Director of Public Prosecutions recommended his arraignment in court and the said office ought to have approached this court, if need be, and not the defendant/applicant as is the case here. Further, that the complainant in Criminal Case No E339 of 2023 has filed his witness statement in this case and will be accorded time to testify during trial and will be cross examined on the veracity of the minutes, if need be.
6. The plaintiff/respondent further deposed that this court and the criminal division of the magistrates' court are distinct and by hierarchy, there is no way that a High Court can stay its proceedings in favour of a lower court proceeding to continue. Further, that under Article 165 of the *Constitution*, this court can order at any time for the lower court file to be brought before this court as it has supervisory jurisdiction over criminal and civil matters.
7. He further deposed that the pressing of the charges against him by James Nderitu-Assistant County Commissioner, is to use the criminal justice system to intimidate him to abandon the instant suit. Further, that the defendant/applicant obtained a temporary status quo in Nakuru Appeal Civil Application No E072 of 2022 which has ignited excitement to derail this court in hearing this matter substantively.
8. The application was canvassed by way of written submissions. On July 14, 2023, the defendant/applicant filed his written submissions dated July 7, 2023 and raised one issue for determination which is whether the proceedings in the suit herein should be stayed pending the hearing of criminal case No E339 of 2023, R versus Jackson Tanyaag.
9. On this issue, the defendant/applicant submitted that Section 193A of the *Criminal Procedure Code* allows both criminal and civil proceedings to run concurrently and gives the criminal proceedings precedence over civil proceedings. Reliance was placed in the cases of *Maina & 4 Others versus Director of Public Prosecutions & 4 Others* (Constitutional Petition E106 & 160 of 2021 (Consolidated) [2022]KEHC- 15 (KLR) and *Amir Lodges Limited & Another versus Mohammed Omar Shariff & Another* [2022] eKLR.
10. The defendant/applicant further submitted that one of the documents relied on by the plaintiff/respondent is a copy of the minutes purportedly held on June 23, 2021 and even though the defendant/applicant will have an opportunity to cross examine the plaintiff/respondent on the veracity of the impugned minutes, the trial court in the said criminal case is better placed to determine the veracity of the minutes as opposed to this court.
11. On August 8, 2023 the plaintiff/respondent filed his written submissions dated August 3, 2023. The plaintiff/respondent reiterated his averments as contained in his replying affidavit and submitted that the two cases i.e. the instant case and Criminal Case No E339 of 2023 are proved on different threshold



as are of civil and criminal nature. He relied on the case of *Speaker of the National Assembly versus James Njenga Karume* [1992] eKLR.

12. The plaintiff/respondent further submitted that the application is a non-starter and that in accordance with Section 193A of the *Criminal Procedure Code*, a civil suit is not a bar to criminal proceedings. Reliance was placed in the cases of *James Mutisya & 5 Others versus Alphayo Chimwanga Munala & 2 Others* [2021] eKLR and *Alfred Lumiti Lusiba versus Petbad Pank Shantilal & 2 Others* [2010] eKLR.
13. I have carefully analysed and considered the application, replying affidavit and the written submissions filed by both parties and the issue for determination is whether this court ought to stay proceedings in this matter pending hearing and determination in Narok Criminal Case No E339 of 2023.
14. An application seeking stay of civil proceedings pending hearing and determination of the criminal matter, on the ground, as urged by the applicant in this case, is unwelcomed in view of Section 193A of the *Criminal Procedure Code* which provides as follows: -

“193A. Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”
15. The jurisdiction of this court which is a court of equal status to that of the High Court, to adjudicate over a civil matter is separate and distinct from the court’s jurisdiction over a criminal matter. For civil matters, the cause of action arises from a wrong committed by one to the other in private whereas for the criminal matter, the basis to press charges and initiate prosecution would arise from a breach of law already prescribed for by law.
16. The instant suit was filed in the year 2021 whereas the criminal matter before the magistrates’ court was filed this year (2023). The nature of the matter before the criminal court as can be seen in the copy of the charge sheet annexed to the application appears to be on claims of uttering false documents. The applicant argued that the subject of the criminal proceedings being minutes of a meeting said to be held on June 23, 2021 is also a document relied on in this case and if this court were to proceed with the hearing, it may reach a decision based on falsified documents.
17. The institution of either proceedings of criminal or civil nature is not a hindrance and/or a bar to the institution and progression of the other. A civil case can rightfully run con-currently with a criminal case and vice versa notwithstanding that they both relate to similar sets of facts. In the instant suit, the standard of proof is on a balance of probabilities whereas for the other i.e. Criminal Case E339 of 2023, the standard of proof is beyond reasonable doubt. Furthermore, the finding of the court in either does not exempt the court confronted with the other matter from applying its own independent mind and analysis of facts and issues, in tandem with the respective rules of procedure. Let me also add that in allowing an application of such nature, this court can only do so under very special circumstances which in this case the applicant has not proved. In any case, I am persuaded that the applicant is trying to delay the proceedings in this matter to his advantage.
18. In disallowing this application, I am persuaded by the decision of the High Court in *Maina & 4 others v Director of Public Prosecutions & 4 others* (Constitutional Petition E106 & 160 of 2021 (Consolidated)) [2022] KEHC 15 (KLR) (Constitutional and Human Rights) (27 January 2022) (Judgment) where the court observed; -

“We respectfully agree and adopt this position in this case but must add that where it is obvious to a court, as it is to us and was to the learned judge of the High Court, that a



prosecution is being mounted to aid proof of matters before a civil court or where the hand of a suspect is being forced by the sword of criminal proceedings to compromise pending civil proceedings, then section 193A of the *Criminal Procedure Code* cannot be invoked to aid that unlawful course of action. Criminal proceedings, whether accompanied by civil proceedings or not, cannot and should never be used in the manner that the 2nd and 3rd respondents have done. It is indeed advisable for parties to pursue civil proceedings initially and with firm findings by the civil court on any alleged fraud, proceed to institute criminal proceedings to bring any culprit to book...”

19. Arising from the above, I find that the notice of motion application dated May 23, 2023 lacks merit and it is hereby dismissed with no orders as to costs. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**HON. MBOGO C.G.**

**JUDGE**

**28/9/2023**

